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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,126	12/19/2001	Hans-Werner Heinrich	101195-63	6139

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EXAMINER

SAUNDERS, DAVID A

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

937,126

Applicant(s)

HEINRICH et al

Examiner

SAUNDERS

Group Art Unit

1644

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on 3/18/04.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1-15, 18-27 is/are pending in the application.
- Of the above claim(s) 22-27 is/are withdrawn from consideration.
- ☒ Claim(s) 1-3 is/are allowed.
- ☒ Claim(s) 4-15, 18-21 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 22-27 are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

The amendment of 3/18/04 has been entered. Claims 1-15 and 18-27 are pending.

Claims 1-15 and 18-21 are under examination.

Newly submitted claims 22-27 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: none of applicant's original presented claims were drawn to an immunoabsorber having immobilized antibodies (whether avian or not) merely against C3a and/or C5a. No claims to this newly claimed invention were examined at the international stage. Nothing in the description points to this new invention. Therefore, the examiner could not have reasonably anticipated that claims to this new invention might be presented; the search burden required to consider this new invention would thus be undue.

Also, since there was no original description of the newly claimed invention having antibodies only against C3a and/or C5a, applicant cannot argue that this new invention is his contribution over the prior art. The newly claimed invention thus has no unity with that set forth in the description.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22-27 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The amendment of 3/18/04 has overcome the following bases of objection/rejection set forth in the rejection mailed 6/24/03:

- 1) The objection under 37 CFR 1.75 (c).
- 2) The rejection under 35 USC 101.
- 3). The rejections under 35 USC 112, second para. However, see new rejections infra.
- 4). The rejection under 35 USC 103.

Claim 6 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Since applicant's amendment has incorporated the limitations of claim 6 into claim 1, the examiner finds nothing in claim 6 that further limits claim 1.

Claims 4-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, "the specific antibodies specific for sepsis mediators" lack antecedent basis.

In claim 5 "the antibodies are specific for at least one sepsis mediator" is confusing. Are these antibodies provided in addition to the antibodies against C3a/C5a and LPS recited in base claim 1?

In claims 6-10 "the bound antibodies" lack antecedent basis.

In claim 11 "the organic or synthetic carrier material" lacks antecedent basis, since no "material" is recited in claim 1.

In claim 11, last line "including" is indefinite.

In claim 12, "the immobilized specific antibodies" lack antecedent basis, since base claim 1 recites, merely, "immobilized antibodies."

In claim 13, "the carrier materials" lack antecedent basis.

In claim 14 "aimed against" is unclear for reasons set forth in the action of 6/24/03.

In claim 15 "including" is indefinite. The members recited after "including" may be properly recited in a further dependent claim.

Claims 18-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. New claims 18-21 recite new matter.

Claim 18 recites new matter by reciting "blood" and "whole blood". Applicant urges that page 10 supports by reciting "serum, blood plasma or buffers". The examiner notes that neither "serum" nor "blood plasma" are "whole blood"; thus the claims clearly recite new matter.

Furthermore, neither serum nor plasma have "intact cells or cellular debris"; thus claim 20 recites new matter; the examiner fails to find any disclosure teaching corresponding to further dependent claim 21.

Additionally, with respect to claim 18, the examiner finds no disclosure support for recitations of "hemofiltration", "concentration" and "dilution" in the concluding paragraph of claim 18.

Claims 1-15 and 18-21 are allowable over the prior art of record.

Any response after final must cancel non-elected claims 22-27, in order to avoid the scenario of paying an extension of time fee for their cancellation.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Saunders, PhD whose telephone number is

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571-272-0849. The examiner can normally be reached on Monday-Thursday from 8:00a.m to 5:30p.m. The examiner can also be reached on alternate Fridays

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan, can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Saunders/tgd

May 27, 2004

*David A. Saunders*  
DAVID SAUNDERS  
PRIMARY EXAMINER  
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